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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.              | CONFIRMATION NO.       |
|--|-------------|----------------------|----------------------------------|------------------------|
| 10/597,555   | 07/28/2006  | Frank Olischewski    | 207930205087-US0                 | 2730                   |
| 7278   | 7590        | 02/18/2009           |                                  |                        |
| DARBY & DARBY P.C.<br>P.O. BOX 770<br>Church Street Station<br>New York, NY 10008-0770 |             |                      | EXAMINER<br>SPINKS, ANTOINETTE T |                        |
|  |             |                      | ART UNIT<br>2622                 | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>02/18/2009          | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/597,555

**Applicant(s)**

OLSCHEWSKI ET AL.

**Examiner**

ANTOINETTE T. SPINKS

**Art Unit**

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

This is a first office action in response to application 10/597,555 filed on July 28, 2006 in which claims 34 – 66 are presented for examination.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Information Disclosure Statement***

Acknowledgement is made of receipt of Information Disclosure Statements(s) (PTO-1449) filed 11/09/2006. An initialed copy is attached to this Office Action.

#### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 34 – 38, 41, 43, 50 – 55, 58 and 60 rejected under 35 U.S.C. 102(b) as being anticipated by Braun et al. (WO 02/05549).**

Regarding claims 34 and 50, Braun et al. disclose a microscope system comprising:

at least one lens (*lens 104*) configured to define an illumination field;

at least one light source (*light source 80*) configured to emit an illuminating light beam for illuminating a specimen through the lens;

at least one detector (*photosurface 22*) configured to, pixel-by-pixel, detect a detection light beam coming from the specimen (38);

an electronic circuit (*controller 60*) connected downstream from the detector, the electronic circuit including a memory unit (p. 23, line 14) configured to store a wavelength-dependent brightness distribution of an illumination field of the at least one lens, the electronic circuit configured to employ, pixel-by-pixel, the stored wavelength-dependent brightness distribution so as to form a homogeneously illuminated image field (*the brightness distribution of each refractive optical element is dependent on the wavelength*); and

an actuatable element (*pixilated illuminator 74*) configured to control, pixel-by-pixel, an intensity of the illuminating light beam as a function of the stored wavelength-dependent brightness distribution (p. 22, lines 14-15) so as to homogeneously illuminate the illumination field (p. 6, lines 22-28).

Claims 35 – 36, 38, 51 – 53 and 55 is rejected as applied in the rejection of claim 34 and 50.

Regarding claims 37 and 54, Braun discloses all the aforementioned limitations of claims 36 and 50, respectively. Braun also discloses wherein: the actuatable element includes an LCD matrix having individual pixels configured to be actuated according to the stored wavelength-dependent brightness distribution (p. 22, line 12 – p. 23, line 16); and the detector includes a CCD chip (p. 13, line 9).

Regarding claims 41 and 58, Braun discloses all the aforementioned limitations of claims 36 and 50, respectively. Braun also discloses wherein the at least one light source includes at least one laser (p. 24, lines 6-11).

Regarding claims 43 and 60, Braun discloses all the aforementioned limitations of claims 41 and 58, respectively. Braun also discloses wherein the at least one laser is configured to emit a continuous wavelength spectrum (p. 24, lines 6-11).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 39 – 40, 42, 44 – 49, 56 – 57, 59, 61 – 66 rejected under 35 U.S.C. 103(a) as being unpatentable over Braun et al.**

Regarding claims 39 and 56, Braun discloses all the aforementioned limitations of claims 34 and 50, respectively. Braun fails to explicitly disclose wherein the actuatable element includes an acousto-optic element configured to be actuated as a function of the stored wavelength-dependent brightness distribution so that the illumination field has a homogeneous brightness distribution. However, Braun does disclose the use of lasers as the light source. Official notice is taken to note that the use of acousto-optic elements for the diffraction of laser light is notoriously well known and used in the related art and would have been obvious to one of ordinary skill in the art at the time the invention was made for the purpose of temporally and spatially affecting the light beams.

Regarding claims 40 and 57, Braun discloses all the aforementioned limitations of claims 39 and 56, respectively. Braun fails to explicitly disclose wherein the acousto-optic element includes at least one of an AOTF, an AOBS and an AOM. Official

notice is taken to note that the most common acousto-optic devices used are and AOM, AOTF and AOBs. This is notoriously well known and used in the related art and would have been obvious to one of ordinary skill in the art at the time the invention was made for the purpose of temporally and spatial affecting the light beams.

Regarding claims 42 and 59, Braun discloses all the aforementioned limitations of claims 41 and 58, respectively. Braun fails to explicitly disclose wherein the at least one laser includes a multiline laser. Official notice is taken to note that the use of multiline lasers is notoriously well known and used in the related art and would have been obvious to one of ordinary skill in the art at the time the invention was made for the purpose of generating several wavelengths with a single laser.

Regarding claims 44 and 61, Braun discloses all the aforementioned limitations of claims 39 and 50, respectively. Braun also discloses wherein: the detector includes at least one light-sensitive element configured to serially capture pixels of the illumination field on the specimen (p. 13, line 9); and the electronic circuit is configured to combine the pixels so as to form the image field, the image field being computable with the wavelength-dependent brightness distribution (p. 23, lines 9-16).

Regarding claims 45 and 62, Braun discloses all the aforementioned limitations of claims 44 and 64, respectively. Braun fails to explicitly disclose wherein the detector includes an SP module having at least one light-sensitive element. However as

suggested in Braun (p. 13, lines 11-14), one of ordinary skill in the art would not have been precluded from including an "SP module" for the purpose of better focusing images on the photosurface 22.

Regarding claims 46 and 63, Braun discloses all the aforementioned limitations of claims 34 and 50, respectively. Braun fails to explicitly disclose wherein the electronic circuit includes a Field-Programmable Gate Array. However, Braun does disclose controller 60 can be programmed to increase illumination of illumination zones (p. 21, lines 21-23). Official notice is taken to note that the use of a FPGA to program a control circuit is notoriously well known and used in the related art and would have been obvious to one of ordinary skill in the art at the time the invention was made for the purpose of allowing the ability to update the functionality after shipping.

Regarding claims 47 and 64, Braun discloses all the aforementioned limitations of claims 34 and 50, respectively. Braun fails to explicitly disclose wherein the electronic circuit is implemented in a personal computer associated with the microscope. Official notice is taken to note that the use of a computer to implement a control circuit is notoriously well known and used in the related art and would have been obvious to one of ordinary skill in the art at the time the invention was made for the purpose of easily allowing control of the circuit by the user without the need to manipulate the actual device, internally.



Regarding claims 48 and 65, Braun discloses all the aforementioned limitations of claims 34 and 50, respectively. Braun fails to explicitly disclose wherein the wavelength-dependent brightness distribution includes a model. Official notice is taken to note that the use of a model as a calculation or value guideline is notoriously well known and used in the related art and would have been obvious to one of ordinary skill in the art at the time the invention was made for the purpose of consistent calculations throughout the process which would allow for a better output image.

Regarding claims 49 and 66, Braun discloses all the aforementioned limitations of claims 48 and 65, respectively. Braun fails to explicitly disclose wherein the wavelength-dependent brightness distribution is approximated as a polynomial of a higher order and respective coefficients of the model are approximated as a spline function or as a differently modeled spectral function. It would be obvious to one of ordinary skill in the art to approximate the distribution as a higher order polynomial as stated in the instant application ([0024]). Official notice is taken to note that the use of a spectral function to approximate a model is notoriously well known and used in the related art and would have been obvious to one of ordinary skill in the art at the time the invention was made for description purposes.

**Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTOINETTE T. SPINKS whose telephone number is (571)270-3749. The examiner can normally be reached on 8:00am-5:30pm, M-F, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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